

**Viox Services, Inc. and Local 212, International Brotherhood of Electrical Workers, AFL-CIO-CLC.** Cases 9-CA-28310, 9-CA-28597, 9-CA-28697, 9-CA-28820, and 9-CA-29231

August 31, 1992

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

Upon charges and amended charges filed by Local 212, International Brotherhood of Electrical Workers, AFL-CIO-CLC, the Union, the General Counsel of the National Labor Relations Board issued a complaint and various consolidated complaints in 1991 against Viox Services, Inc., the Respondent. The 1991 complaints and consolidated complaints were the subject of an informal settlement agreement which was approved on December 20, 1991. Following the filing of a further charge on January 15, 1992, on February 27, 1992, the General Counsel issued an order consolidating cases, consolidated complaint, order vacating settlement agreement and notice of hearing (consolidated complaint) alleging that the Respondent has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. By letter of July 21, 1992, the Respondent withdrew the answers filed in all the above-captioned matters with the understanding that the General Counsel would proceed to summary judgment against it.

On August 6, 1992, the General Counsel filed a Motion for Summary Judgment. On August 11, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service, "all the allegations in the consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board." The undisputed allegations in the Motion for Summary Judgment disclose that by letter of July 21, 1992, the Respondent withdrew all answers in this matter. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the

consolidated complaint must be considered to be admitted to be true.<sup>1</sup>

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, has been engaged as a general contractor in the construction industry in the greater Cincinnati, Ohio area. During the 12-month period ending December 31, 1991, the Respondent purchased and received at its Ohio jobsites goods valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On or about February 12, 1991, the Respondent threatened to discharge employees for engaging in union activities, threatened to delay any representation election for 2 years in order to discourage employees' support for the Union, and threatened employees with unspecified reprisals for engaging in union activities.

On or about February 14, 1991, the Respondent impliedly threatened employees with discharge for engaging in union activities, threatened its employees that their selection of the Union as their collective-bargaining representative would be futile because the Respondent would never sign a contract, and impliedly threatened employees regarding their support for and activities on behalf of the Union. About July 1, 1991, the Respondent informed an employee that he had "two strikes" against him, the Union and OSHA, and threatened him with more onerous work and working conditions to discourage his union activities.

Since about February 15, 1991, the Respondent promulgated and since then has maintained a rule which prohibits employees from discussing their wages and which threatens employees with termination or other disciplinary action for violating the rule. The Respondent promulgated and maintained this rule in order to discourage its employees from forming, joining, or assisting the Union or engaging in other concerted activities.

About February 11, 1991, and continuing thereafter, the Respondent imposed more onerous working conditions on employee Bruce Jones and changed his working conditions and hours of work. About March 5, 1991, the Respondent laid off Jones. The Respondent

<sup>1</sup> See *Maislin Transport*, 274 NLRB 529 (1985).

imposed more onerous working conditions; changed working conditions and hours of work; and laid off Jones because he joined, supported, or assisted the Union, to discourage employees from engaging in these activities.

About May 1, 1991, the Respondent discharged and at all times thereafter until about June 20, 1991, refused to reemploy Jones. About June 20, 1991, the date of Jones' reemployment, and continuing through July 3, 1991, the Respondent imposed more onerous working conditions on Jones by assigning him to manually dig a trench, requiring him to pay for drinking water, and allowing other employees to harass and endanger him. About July 1, 1991, the Respondent issued two written warnings to Jones. The Respondent discharged Jones; refused to reemploy Jones; imposed more onerous working conditions on Jones, and issued written warnings to Jones because he joined, supported, or assisted the Union, to discourage employees from engaging in these activities, or because Jones gave testimony to the Board in the form of an affidavit.

About January 6, 1992, the Respondent issued an unfavorable performance review to Jones. About January 13 until February 14, 1992, the Respondent laid off Jones. The Respondent issued an unfavorable performance review and laid off Jones because he joined, supported, or assisted the Union, to discourage employees from engaging in these activities, or because Jones gave testimony to the Board in the form of an affidavit and participated in the Board's process.

#### CONCLUSIONS OF LAW

1. By making various threats and implied threats in February and July 1991, and promulgating and maintaining a rule since about February 15, 1991, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By imposing more onerous working conditions and changing working conditions and hours of work of employee Bruce Jones in February 1991, and laying off Jones in March 1991, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

3. By discharging Jones about May 1, 1991, and refusing to reemploy him until about June 20, 1991, by imposing more onerous working conditions on Jones from about June 20 through July 3, 1991, by issuing two written warnings to Jones about July 1, 1991, by issuing an unfavorable performance review to Jones about January 6, 1992, and by laying off Jones about January 13 until February 14, 1992, the Respondent has engaged in unfair labor practices affecting com-

merce within the meaning of Section 8(a)(1), (3), and (4) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully laid off employee Bruce Jones at various times and having found that the Respondent unlawfully discharged and refused to reemploy Jones, we shall order the Respondent to make whole its employee Bruce Jones for any loss of earnings as a result of the discrimination against him with backpay calculated as set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Viox Services, Inc., Reading, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to discharge employees for engaging in union activities, threatening to delay any representation election in order to discourage employees' support for the Union, threatening employees with unspecified reprisals for engaging in union activities, impliedly threatening employees with discharge for engaging in union activities, threatening its employees that their selection of the Union as their collective-bargaining representative would be futile because the Respondent would never sign a contract, impliedly threatening employees regarding their support for and activities on behalf of the Union, informing an employee that he had "two strikes" against him, the Union and OSHA, and threatening him with more onerous work and working conditions to discourage his union activities.

(b) Promulgating and maintaining a rule which prohibits employees from discussing their wages and which threatens employees with termination or other disciplinary action in order to discourage employees from forming, joining, or assisting the Union, or engaging in other concerted activities.

(c) Imposing more onerous working conditions; changing working conditions and hours of work; laying off employees; discharging and refusing to reemploy employees; issuing written warnings to employees; and issuing unfavorable performance reviews to employees because they joined, supported, or assisted the Union to discourage employees from engaging in such activities, and/or because they gave testimony to the Board and participated in the Board's processes.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole its employee Bruce Jones for any losses suffered in the manner set forth in the remedy section of this decision.

(b) Remove from its files any references to the unlawful layoffs, discharge, written warnings, and performance appraisal of Bruce Jones, and notify him in writing that this has been done and that the unlawful actions will not be used against him in any way.

(c) Rescind the unlawful rule prohibiting employees from discussing their wages and threatening employees with termination or other disciplinary action for violating the rule.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Reading, Ohio, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize  
To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to discharge our employees for engaging in activities on behalf of Local 212, International Brotherhood of Electrical Workers, AFL-CIO-CLC or any other union.

WE WILL NOT threaten to delay any representation election in order to discourage your support for the Union.

WE WILL NOT threaten our employees with unspecified reprisals for engaging in union activities.

WE WILL NOT impliedly threaten our employees with discharge for engaging in union activities.

WE WILL NOT threaten our employees that their selection of the Union as their collective-bargaining representative would be futile because we would never sign a contract.

WE WILL NOT impliedly threaten our employees regarding their support for and activities on behalf of the Union.

WE WILL NOT inform our employees that they have "two strikes" against them, the Union and OSHA, and threaten them with more onerous work and working conditions to discourage their union activities.

WE WILL NOT promulgate and maintain a rule which prohibits our employees from discussing their wages and which threatens our employees with termination or other disciplinary action in order to discourage them from forming, joining, or assisting the Union or engaging in other concerted activities.

WE WILL NOT impose more onerous working conditions; change working conditions and hours of work; lay off employees; discharge and refuse to reemploy employees; issue written warnings to employees; and issue unfavorable performance reviews to employees because they joined, supported, or assisted the Union to discourage employees from engaging in such activities, and/or because they gave testimony to the Board and participated in the Board's processes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL our employee Bruce Jones whole for any loss of earnings he may have suffered as a result of our unlawful layoffs and discharge, with interest.

WE WILL notify him that we have removed from our files any reference to his unlawful layoffs, discharge, written warnings, and performance appraisal and that they will not be used against him in any way.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL rescind our rule prohibiting employees from discussing their wages and threatening termination or other disciplinary action if they do so.

VIOX SERVICES, INC.